

**Minutes of the Eighty- Ninth Meeting of the
Office for Legal Complaints (OLC)**

Monday 9 July 2018

10:30 – 14:30

Legal Ombudsman, Birmingham

Present:

Wanda Goldwag, Chair
Bernard Herdan
Rebecca Hilsenrath
Michael Kaltz
Lis Bellamy
Annette Lovell

Apologies:

Jane Martin

Board Secretary:

Kay Kershaw

In attendance:

Rob Powell, Chief Executive
Rebecca Marsh, Chief Ombudsman
Clair Daniel, Senior Ombudsman (item 2)
Steve Pearson, Senior Ombudsman (item 3)
Marina Gibbs, Legal Services Board (item 3)
Caroline Wallace, Legal Services Board (item 3)
Taran Hayre, Legal Manager, (item 12)
Sarah Ritzenthaler, Parliamentary and Policy
Officer (item 13)
Kimberley Wallaard, staff observer
Jess Hood, staff observer

Preliminary issues:

The Board meeting was quorate.

Annette Lovell declared that she was an employee of the Financial Ombudsman Service (FoS). The Board agreed that she could remain present for all discussions relating to FoS at this meeting.

Item 1 – Welcome and apologies

1. The Chair welcomed attendees to the meeting. Staff observers were reminded to observe the confidentiality of discussions held during the meeting, where appropriate.

Item 2 – Standing reports

Executive report

2. The CEO and Chief Ombudsman presented a report setting out key issues arising since the June Board meeting and meetings with key stakeholders.
3. The key focus of the executive was driving improved performance. Two additional teams were now working under the supervision model which allowed for comparative benchmarking to inform the evaluation of the supervision pilots.

4. Closure rates and the speed of progression in legacy were being maintained, and with the required quality.
5. The latest intake of new staff in legal went live on cases at the end of June.
6. The Chief Ombudsman reported on discussions held with the SRA about issuing waivers for solicitors to work in non-regulated business and the wider implications of 'Looking to the Future'.
7. In discussion the Board was advised that LeO had mechanisms in place to capture manually details of any SRA waivers that were issued onto the system, but in the longer term, this information would be provided by the SRA as part of its regular automated data upload.
8. Work to review the Scheme Rules was to commence at the end of quarter two and aimed to identify areas which do not support the effective running of the Scheme, to identify possible solutions and identify areas for development that would focus on restorative justice and informal resolution. It was accepted that any changes requiring legislation were unlikely to be possible given other Government priorities.
9. The Chair, CEO and Chief Ombudsman attended a positive meeting with Lord Keen on 21 June to discuss the OLC's Annual Report and Accounts for 2017-18.
10. Confirmation is awaited about the location of the CMC department once it transfers to the Financial Ombudsman (FOS). This is creating some uncertainty for staff currently employed at LeO in terms of making decisions about their futures. In light of this, the Chair asked the Executive to write formally to FOS to request information about the location of the CMC department.

ACTION: The Executive to write to the Financial Ombudsman requesting information about where the CMC department will be located.

11. Confirmation is also awaited from Treasury about how the transfer of CMC to FOS is to be funded. The CEO reported that under transitional arrangements any redundancy payments to CMC staff were likely to be funded by FOS after transfer. A discussion took place about the implications for the OLC and its powers in regard to any slippage around the CMC transfer date.
12. Senior Ombudsman Clair Daniel advised Board members of the process to follow in the event of a complainant sending a service complaint directly to them. Board members were assured that the process for dealing with service complaints was robust. Learning from service complaints was captured and fed back into the business for appropriate action. A briefing on individual service complaints would only be provided to the Board if a particular risk was identified.
13. Planning for the eventual archiving and decommissioning of CMS1 continued to be developed.
14. The reward and recognition scheme – Celebrating Success - was to be launched on 11 July.
15. The Chief Ombudsman reported that a firm subject to a Category 1 Publication had gone into liquidation and explained the implications for complainants.

16. The Board **noted** the update on legal matters that had been issued separately under legal privilege.
17. The Board **noted** the update on external meetings attended by the CEO and CO.
18. The Board **noted** the Executive report.

Finance Report

19. The CEO presented a paper providing an overview of the financial position at the end of month 3 and reported on the key issues in the management accounts.
20. The Board **noted** that the figures reported in the paper reflected the original budget prepared in February 2018; subsequent changes in departments and structure would be reflected in a reforecast exercise taking place in July 2018.
21. The reforecast would be reported in period 4. The ARAC Chair requested that the original budget was reported alongside re-forecast for transparency.

ACTION: Head of Finance to ensure that the original budget was reported alongside re-forecast for transparency.

22. The 2018-19 delegations from the MoJ were received in June and were in line with expectations. Delegation letters had been sent to budget holders.
23. The OLC's 2017-18 Annual Report and Accounts were submitted to ARAC on 2 July for comment. On 3 July the OLC Board approved the Annual Report and Accounts for signature.
24. Annual Report and Accounts were submitted to the Comptroller and Auditor General for certification and were on track to be published on 19 July.
25. A discussion took place about the budgetary underspend on staffing and its implications and associated challenges on performance and workloads. The Executive assured the Board that it had considered all possible options in regard to recruitment. It was noted that without legislative change, it would not be possible to outsource operational work undertaken under delegations from the Chief Ombudsman.
26. The Board **noted** the finance report.

Item 3 – Quarterly strategic and performance report

27. The CEO presented an update on quarterly strategic and performance against the 2018-19 business plan, operational delivery plan and strategic risks at the end of quarter one.
28. Performance against key performance indicators for this period, including tolerances, was in line with expectations and reflected the fact that plans had been based on an improving trajectory throughout 2018-19.
29. There had been good progress against business plan deliverables and the delivery plan, and there were some early positive indicators in regard to operational performance, particularly in the legacy team. Nevertheless, as anticipated, overall performance remained poor.

30. As expected, there were some breaches of tolerances: against 7 out of 30 sub-measures relating to five KPIs; and two of 23 sub-measures relating to two of the 11 strategic Board indicators. Of the nine sub-measures, four related to CMCs.
31. During this quarter, final stages of Phase 1 of Modernising LeO had been successfully delivered.
32. Performance would continue to be impacted in quarters two and three by the significant number of staff still working on the old case management system and around half of staff working on both systems. This impact would reduce as case holdings moved onto the new CMS.
33. 40 new staff joined operational teams during quarter one. The volume of change, and early challenges for investigators in picking up assessment work, were settling down.
34. The delivery plan closure targets for quarter one had been exceeded by 10%, and as new staff become more productive, increased productivity was expected during quarter two 2.
35. A significant focus and concerted effort was going into building a high performance culture and addressing variable performance across the organisation.
36. Disappointing Pulse survey results, reported to RemCo in June, reflected the challenges associated with the volume of change during this reporting period.
37. The focus in quarter two would be on increasing delivery and productivity in line with the delivery plan profile through improved case progression, quality and timeliness.
38. It was noted that the key challenge for the Executive was to achieve the right balance between short-term improvement and investment in sustainable long-term improvement.
39. The Chief Ombudsman reported that the process for assessment was currently under review and any improvements identified to improve the flow of cases would be implemented.
40. The Board raised concern about the risk of demand remaining lower than profiled and its impact on operational resourcing risks.
41. Following discussion, the Board asked for a graphical month by month performance forecast, showing performance to date and a projected trajectory to be included in future performance Board papers.
ACTION: The Chief Ombudsman to ensure that a graphical month by month performance forecast, showing performance to date and a projected trajectory, is included in future performance Board papers.
42. The Chief Ombudsman had implemented stage reviews on case progression and age related checkpoints and assured the Board that all cases aged over 70 days were being reviewed to support progression.
43. The Chief Ombudsman would be analysing the results of quality metrics and would update Board members on her findings before the next Board meeting.

ACTON: The Chief Ombudsman to update Board members on her analysis of quality metrics before the next Board meeting.

44. Board **noted** the Executive's budget and workforce challenges, particularly the potential need to absorb CMC and legacy staff from 1 April.
45. Of the five new strategic risks, one was in line with target risk while the other four were above target because of a combination of current performance issues, the process of transition to new ways of working and workforce and organisational challenges.
46. The LSB enquired whether the Board was satisfied with the progress that had been made to date to improve performance. In response, the Board, and Executive, reported that they would not feel performance was satisfactory until there is sustainable delivery against the new KPIs. They were pleased with progress made in legacy and in the supervision model but acknowledged that there was still a lot to be done in order to ramp up delivery to achieve a sustained, consistent improvement in performance.
47. The Board **noted** the progress made against the delivery plan. Concerns were raised about variable performance and the need to see further performance improvements in quarter two in line with the delivery plan.
48. The Board **noted** the quarterly strategic update.

Item 4 – Quarterly modernising LeO report

49. The CEO updated the Board on progress on Modernising LeO during quarter 1 when the programme had focussed on rolling out the new process, staffing model and case management system and planning work for phase 2 of the programme.
50. The first phase of the programme and its work streams were to be closed down. Outstanding activities would transfer to business as usual.
51. The Executive was currently considering its options in regard to the decommissioning of CMS 1. It was noted that there was likely be a point in the future when remaining cases would need to be transferred onto the new system.
52. Lessons learned from phase 1 had been reviewed by Programme Board. The Board commented on the success of the IT roll out, but noted the importance of fully understanding business process and business need in specifying solutions.
53. Bernard Herdan, the Board member attending the Modernising LeO Programme Board, reported on the quality of project management and the new PMO team.
54. In discussion it was felt that there was still scope to prioritise work streams and projects for phase 2 and that the people and ways of working work stream should be moved into business as usual.
55. Following discussion, the Board urged the Executive to expedite the development of the on line customer self-assessment tool, and in doing so sought to learn from similar tools used in other organisations. Board members offered to test the self-service assessment tool once it was in place.
56. The Board **noted** the update on Modernising LeO.

Item 5 – Previous Minutes

57. The minutes of the RemCo meeting held on 27 April 2018 were **approved** for accuracy and for publication, subject to the recommended redactions.

ACTION: Board Secretary to publish the minutes of the RemCo meeting held on 27 April 2018.

58. Subject to an amendment to paragraph 70, the minutes of the OLC meeting held on 4 June 2018 were **approved** for accuracy and for publication.

ACTION: Board Secretary to publish the minutes of the OLC Board meeting held on 4 June 2018.

Item 6 – Matters arising and actions from previous meetings

59. The Board **ratified** a decision made out of committee on 3 July to approve the Annual Report and Accounts for 2017-18.

60. The Board **ratified** a decision made out of committee to approve the OLC's response to the Department for Business, Energy and Industrial Strategy's consumer green paper on Modernising Consumer Markets.

61. The Board **ratified** a decision made out of committee by the Chair and Rebecca Hilsenrath, in line with the Scheme of Delegation, to approve a business case for the annual licence renewal for Microsoft for the period 1 July 2018 to 30 June 2019.

62. The Board **noted** the update on the actions from previous meetings.

Item 7 – ARAC update

63. The Chair of the Audit and Risk Committee provided a verbal update on the key discussions that took place at the meeting on 2 July. Discussions included updates on the 2017-18 annual report and accounts, internal and external audit, policy reviews and approvals, data handling incidents, cyber security and penetration testing, health and safety and standing items. Sarah Ritzenthaler, Parliamentary and Policy Associate, was congratulated for her excellent project management of the Annual Report and Accounts process.

Item 8 – RemCo update

64. The Chair RemCo provided a verbal update on the key discussions that took place at the meeting on 13 June. Discussions included updates on HR matters, staff reward and recognition plans, the well-being agenda, Equality and Diversity trends the Pulse survey, staff morale, learning and development, policy reviews and approvals and flexible working

Item 9 – Welsh language report

65. The CEO presented the OLC's proposed 2017-18 update to the Welsh Language Commissioner on implementation of the Welsh Language Scheme.

66. The Board noted that LeO had met its Welsh Language obligations under the terms of its Scheme between May 2017 and May 2018.

67. The CEO reported on the need, alongside implementation of the Welsh Language scheme, for LeO to increase its stakeholder engagement in Wales.
68. Subject to clarification on whether the reference to a complaint made by someone who identified as a Welsh speaker was a complaint about a legal provider or a complaint about LeO, and the correction of a typographical error, the Board **approved** the 2017-18 update to the Welsh Language Commissioner.

Item 10 – Tailored review update

69. The CEO presented a paper updating the Board on the progress made in regard to the implementation of the recommendations of the Tailored Review of the OLC and LSB that was undertaken by the MoJ in 2017.
70. In discussion, it was noted that, like the Chair, some of the other current Board members were not members of the Board when a decision had been made by the OLC not to become an Alternative Dispute Resolution provider at that particular time. In light of this, it was **agreed** that a briefing paper provided to the Chair about historical ADR decisions would be circulated to all Board members.

ACTION: The Chief Ombudsman to circulate the briefing paper provided to the Chair about historical ADR decisions to all Board members.

71. The CEO reported that the majority of recommendations had been implemented or were in train, and that the key issue would be demonstrating improved performance
72. Whilst feedback to front line regulators, representative bodies and the LSB had increased, there would be more opportunities to increase feedback as a result of Modernising LeO initiatives that had been introduced to improve data collection and management information.
73. The Board **noted** the issues highlighted in the Tailored Review update.

Item 11 – Transparency publications for approval

74. The Board **approved** the gifts and hospitality register covering the period 14 April to 25 June 2018 for publication.
75. The Board **approved** the OLC Board member and Ombudsman register of interests for publication, subject to an additional entry under ‘self-employment’ for one of the Board members.
76. The Board **approved** the OLC Board member and senior manager expenses reports for the period of 1 April to 30 June 2018 for publication, subject to the inclusion of a nil return status for those Board members who had not claimed expenses during the reporting period.

ACTION: The Board Secretary to publish the transparency publications, subject to the amendments stated above.

Item 12– Strategic approach to enforcement

77. The CEO and Legal Manager presented a draft paper updating the Board on powers available under the Legal Services Act 2007 to enforce decisions and

recover case fees, and the issues and considerations when making decisions about enforcement.

78. The paper set out the extent and impact of enforcement activity; including how the organisation used various options to recover debts, enforce decisions, publish details of Ombudsman decisions and worked with the Insolvency Service to recover debts.

79. The Board recognised the limitations of enforcement under current legislation.

80. In discussion the Board requested further work on the draft paper.

ACTION: Head of Legal to update the draft paper in light of the Board's feedback.

81. The paper set out specific transitional proposals for enforcement in the CMC jurisdiction prior to the transfer of complaints handling to the Financial Ombudsman Service assuming there would be a hard cut-off.

82. A detailed discussion took place during which Board **agreed** the principle that in the case of a hard cut-off of the CMC jurisdiction, a date should be identified six months prior to transition. After this date, complainants would be provided with guidance and appropriate signposting.

Item 13 – Horizon scanning

83. The CEO presented a paper setting out an update on horizon scanning activities in June 2018.

84. Horizon scanning was now routinely undertaken as a mitigation against the risk of 'failure of the scheme to respond effectively to the external environment'. This identified any issues that might have an influence on LeO's day to day operational business, build understanding of the external environment, informed demand forecasting and policy responses to changes in the landscape.

85. In discussion, the Board commented on the volume of activity taking place within the legal landscape at a time when there was limited opportunity for legislative changes and felt that the OLC should exploit opportunities to make positive changes in the legal sector outside of legislation.

86. The Board recommended that future horizon scanning papers should include what impact the findings would have on the organisation.

ACTION: Parliamentary and Policy Associate to include in the horizon scan more information on the impact of issues on the organisation.

87. The Board **noted** the contents of the horizon scanning paper.

Item 14 - Board paper redactions

88. The Board reviewed a paper setting out proposed redactions to July papers, in addition to which the CEO reported on additional redactions required.

89. The Board **approved** the redactions proposed and publication of July papers.

ACTION: Board Secretary to publish the July Board papers.

Item 15 – AoB

- 90.** The Chief Ombudsman congratulated the Chair on making the top 100 of the Pride Power list 2018.